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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,938	02/22/2002	Stacey A. Infantino	HANN-0002	6412
23550	7590	01/27/2005		
HOFFMAN WARNICK & D'ALESSANDRO, LLC				
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ALBANY, NY 12207				
EXAMINER				
STEPHENS, JACQUELINE F				
ART UNIT		PAPER NUMBER		
3761				

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/081,938

Applicant(s)

INFANTINO ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13, 20-25, 27 and 29 is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 14-16, 18, 19, 26 and 28 is/are rejected.
- 7) ☒ Claim(s) 2 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 5, 14, 15, 26, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al. USPN 5989236.

As to claims 1 and 5, Roe discloses an incontinence article **20** comprising a front portion **34**, a rear portion **38**, and a bumper **92** extending to transversely opposite side edges along a longitudinally outer edge of at least one of the front portion and the rear portion (Figures 10 and 11).

As to claim 3, Roe discloses a back guard **62** extending above the front portion vertically from a waist area of the rear portion to a middle back area of a user (Figures 1 and 6; col. 1, lines 43-45 and col. 9, lines 38-41).

As to claims 14 and 15, Roe discloses an incontinence article **20** comprising:
a front portion **34**, a rear portion **38**, and a back guard **62** extending above the front portion vertically from a waist area of the rear portion to a middle back area of a user (Figures 1 and 6; col. 1, lines 43-45 and col. 9, lines 38-41),
a crotch portion between the front portion and the rear portion; and
bumper **92** extending to transversely opposite side edges along a longitudinally outer edge of at least one of the front portion and the back guard (Figures 10 and 11).

As to claims 26 and 28, Roe discloses the bumper **92** that may be made of any known material suitable for use in a disposable absorbent article, such as the same material as the topsheet (col. 4, lines 41-44 wood or cotton fibers and rayon fibers, which are all absorbent materials). The flap 92 is centrally located centrally on the back guard (Figures 10 and 11).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6, 7, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe USPN 5989236. Roe discloses the present invention substantially as claimed. However, Roe does not disclose the bumper is in the shape of a block or a roll. It would have been an obvious matter of design choice to provide the bumper of Roe with a block or roll shape, since such a modification would have involved a mere change in the shape of the component. "A change in shape is generally recognized as being within the level of ordinary skill in the art". *In Re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

6. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe 5989236 view of Glaug et al. USPN 6258076.

As to claims 4 and 16, Roe discloses the present invention substantially as claimed. However, Roe does not disclose a bumper positioned along the longitudinally

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outer edge of the front portion. Glaug discloses a disposable absorbent article comprising a vertical extension (in use) barrier wall for that is present on the front and rear portions of the diaper (Figure 4, for the benefit of impeding the egress of the loose or liquid waste from the front waist portion of the disposable absorbent article (Glaug col. 4, lines 7-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diaper of Roe to have a vertically extending front guard for the benefits disclosed in Glaug.

Allowable Subject Matter

7. Claims 2, 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-13, 20-25, 27 and 29 are allowed. The following is an examiner's statement of reasons for allowance: As to claims 8 and 20, the overall claimed combination of an incontinence article having a front guard extending vertically from a waist area to a middle chest area of a user and a rear portion in combination with a bumper extending to transversely opposite side edges along an outer edge of the front or back guard is neither anticipated nor rendered obvious by the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571)272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

January 22, 2005